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In The

Supreme Court of the United States

OCTOBER TERM, 1951

No. 665

AUTO TRANSPORTS, INC., and
GENERAL MOTORS CORPORATION,
Appellants,

vs.

UNITED STATES OF AMERICA and the
INTERSTATE COMMERCE COMMISSION,
Appellees

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Come now Anchor Motor Freight, Inc., of Delaware, Cleveland, Ohio; Anchor Motor Freight, Inc., of Michigan, Flint, Michigan; Anchor Motor Freight, N. Y. Corp., Tarrytown, New York; Complete Auto Transit, Inc., Detroit, Michigan; and Jack Cooper Transport Company, Inc., Kansas City, Missouri, by Edmund M. Brady, their counsel, and W. R. Arthur & Co., Inc., Janesville, Wisconsin, by Glenn W. Stephens, its counsel, and hereby respectfully request the Court to permit said parties to jointly file a brief as *amicus curiae* in support of the petition of appellants, Auto Transports, Inc., *et al.*, for a rehearing in the above-entitled action.

Applicants represent to the Court that each of them are contract carriers and as such operate under permits issued by the Intertsate Commerce Commission under the provisions of Section 309, U. S. C., Title 49. Each of said applicants has filed with the Interstate Commerce Commission their respective schedules of minimum rates and charges as required under the provisions of Section 318(a), U. S. C., Title 49, and copies of their respective contracts* as required by Section 320(a), U. S. C., Title 49. Said applicants, therefore, have a direct and positive interest in this case as each of them is subject to the provisions of the Interstate Commerce Act and the Commission's Rules and Regulations issued pursuant to said Act. The decision of the Court below** (divided as it was) and the action of this Court in granting appellees' motion to affirm adversely and most seriously affects their respective businesses and operations.

The failure of applicants to make an earlier appearance in this case was occasioned by the fact that the order to show cause issued by the Interstate Commerce Commission herein, and which precipitated this litigation, was issued solely against appellant, Auto Transports, Inc. Moreover, at the time appellants herein brought their appeal, this Court already had denied review of the very question here in litigation. (See *Betterman v. American Stores,* 80 A. 2d 66, 367 Pa. 193, certiorari denied by this Court October 8, 1951, Case No. 190, 96 L. Ed. 32.) In that case the Supreme Court of the State of Pennsylvania decided, by unanimous decision, that under both the Federal statute (Section 318(a) of the Interstate Commerce Act) and the Pennsylvania statute, contract carriers are not bound to

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*The contracting shipper, in each case, is a Division of General Motors Corporation.

***Auto Transports, Inc., v. United States* (101 F. Supp. 132).

charge shippers minimum rates filed by them with the regulatory bodies but may charge contract rates in excess of such minimums. Relying on the action of the Supreme Court in the *Betterman* case, *supra*, applicants considered the matter *res adjudicata*. That situation is now confused by the action of this Court in granting appellees' motion to affirm in this case. The decisions in the two cases are contradictory and diametrically opposed.

Applicants have with due diligence endeavored to obtain the consent of the appellees in this cause (pursuant to the provisions of Rule 27 of the Rules of this Court) to permit them to file a brief as *amicus curiae* in support of the petition for rehearing. That consent has not been forthcoming, hence this motion.

Applicants have had an opportunity to read, study and check the petition of appellants wherein they request this Court to grant rehearing in this cause. Such review of the petition by appellants discloses that the same does not adequately present the issues which they deem necessary and relevant to the proper disposition of this case by this Court. For example, appellants cannot show the impact which the conflicting decisions of this Court, in this case and in the *Betterman* case, will have upon their respective operations nor have they adequately presented the legal arguments pertaining to that matter.

In addition to the foregoing we respectfully submit that the action of the Interstate Commerce Commission herein complained of is illegal and void for the reason that such action is in violation of the provisions of Section 1 of Article I and the Fifth Amendment of the Constitution of the United States.

Therefore, if the situation is permitted to remain in *status quo*, only confusion and irreparable injury and dam-

age will result. Unless this Court grants appellants' petition for rehearing in this cause contract carriers can only attempt to avoid irreparable injury and damage by further litigation involving the same subject matter. Accordingly, we respectfully submit that the foregoing requires that this Court resolve the situation and that applicants be afforded the opportunity of presenting to this Court the reasons why the action of this Court in granting appellees' motion to affirm the decision of the Court below will adversely affect their respective businesses and operations.

Wherefore, applicants request that an order be entered by this Court permitting their joint filing of a single brief as *amicus curiae*, supporting appellants' petition for rehearing, to which end they respectfully pray.

Respectfully submitted,

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Complete Auto Transit, Inc., of Detroit, Michigan;
Anchor Motor Freight, Inc., of Delaware, of Cleveland, Ohio;
Anchor Motor Freight, N. Y. Corp., of Tarrytown, New York;
Anchor Motor Freight, Inc., of Flint, Michigan and
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STEPHENS, CANNON, BIEBERSTEIN
& COOPER,
Of Counsel.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion has been served upon all parties to this case by forwarding a copy of the same to each party, via United States mail, postage fully prepaid.

EDMUND M. BRADY

Dated: Detroit, Michigan
May 12, 1952.

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FILED
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v.

UNITED STATES OF AMERICA and the INTERSTATE COMMERCE COMMISSION, *Appellees*

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

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May 12, 1952

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

This is the motion of the Contract Carrier Conference of the American Trucking Associations, Inc., hereinafter referred to as Movant, for leave to file a brief amicus curiae pursuant to Rule 27 9(c) of the Revised Rules of the Supreme Court of the United States. Movant is a trade association representing the collective interests of some three thousand motor carriers engaged in transporting property in interstate commerce as contract carriers pursuant to permits issued by the Interstate Commerce Commission.

The instant case raises an issue in which all interstate contract motor carriers have a vital interest, namely,

whether the provisions of Title 49 U. S. C. Section 318 (a) requires contract motor carriers to file actual charges with the Interstate Commerce Commission or reasonable minimum charges. Not only are the regulatory aspects of this question of interest to contract carriers, but the effect which a decision on this question will have on their contractual relationships with their shippers is of paramount importance.

The appellant in the instant case, Auto Transports, Inc., is a contract motor carrier of automobiles having but a single contract. The case has been presented to the Court solely on this factual basis. The decision of the Court will affect not only those transporting automobiles under a single contract but will affect those transporting other commodities and those performing services under more than one contract. A number of contract carriers transport property under an agreement which provides a basic rate which is the minimum, but in addition provides that the carrier is entitled to additional amounts under certain circumstances to assure a reasonable profit for services performed. This factual situation has not been called to the Court's attention. A decision on the issue before the Court will either validate or invalidate these contracts to the extent that they provide for compensation in addition to the basic rate.

In *Betterman* v. *American Stores,* 80 A. 2d 66, certiorari denied by this Court October 8, 1951, Case No. 190, 96 L. Ed. 32, it was decided that Betterman, a contract carrier, with one contract, could legally recover sums in addition to its basic rate in accordance with the terms of its contract with American Stores. If the decision of the Court in the instant case stands it is doubtful whether a contract carrier may legally collect anything in addition to the basic rate filed with the Commission. Furthermore, the decision in the instant case certainly gives shippers who have paid over and above the basic rate a grounds for recovering back such payments.

The above facts and legal effect of the Court's decision have not and will not be presented by appellant because they are of no importance to it.

The entire presentation of this case to the Court would indicate that the issue to be decided is of interest only to those contract carriers operating under a single contract. This is not the true fact. Many contract carriers with two or more contracts provide different services for each shipper served. The Interstate Commerce Commission requires that rates be filed for each separate service. If the decision of the Court in the instant case stands these carriers will be required to file their actual rates with the Commission and will be precluded from making additional charges even though the decision in the *Betterman* case, *supra*, appears to give them this right. These facts will not be presented to the Court because they have no application to appellant.

Counsel for Movant attempted to gain the consent of the United States of America to the filing of a brief amicus curiae in support of appellant's petition for rehearing and was unsuccessful.

WHEREFORE, Movant respectfully moves that the Court grant leave to file a brief amicus curiae in support of appellant's petition for rehearing.

Respectfully submitted,

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